delivery of possession to the mortgagee, which under their doctrine ripens his contractual right into a property right, as a preference although made within four months of bankruptcy.[11] The great weight of authority, however, sustains the sound doctrine that the mortgagee possesses a property right which binds subsequent mortgagees and purchasers with notice.[12] Consistency demands the same result where the rights of an attaching creditor are involved,[13] but a number of States, for reasons of policy based upon the apparent ownership of the mortgagor, refuse in such a case to allow the mortgagee to assert his rights.[14] This is evidently the attitude of the court in the principal case, since a trustee in bankruptcy, by the Amendment of 1910 to § 47-*a*, cl. 2, of the Bankruptcy Act of 1898, occupies the position of an attaching creditor.[15] The wisdom of this deviation from principle is questionable, but whatever the nature of the mortgagee's right, it should at least be certain, and the situation demands that clarification by legislative enactment which it has already received in a few States, where provision is made for the creation of a legal lien on after-acquired personal property.[16]

THE BASIS FOR RECOVERY AT LAW IN CASES OF "SHADOWING" BY DETECTIVES.[1]—Although the maxim that there is no wrong without a remedy is frequently recurring in our reports, and the courts since the Statute of Westminster 2nd have striven earnestly to give it effect, yet novel cases are constantly arising where old principles must be fitted to new conditions, and it is interesting to observe by what means the expansion of the law is accomplished. For example, in the recent case of *Schultz* v. *Frankfort Marine Accident etc. Co. et al.* (Wis. 1913) 139 N. W. 386, the plaintiff was subjected to ridicule and loss of employment by reason of his being openly and publicly "shadowed" by the defendant's detectives. His counsel were evidently embarrassed to know how to frame the complaint, but charged the defendants with malicious conspiracy to injure, false imprisonment, invasion of the right of privacy, and defamation. The court chose to grant recovery on the ground of wordless defamation.

From a technical standpoint the facts alleged fail to support any of the wrongs charged. In the first place, conspiracy is not actionable as a separate, substantive wrong unless special damages are traceable to the mere concerted action;[2] hence in the principal case, where the

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[11]Chase *v.* Denny (1881) 130 Mass. 566; Humphrey *v.* Tatman (1905) 198 U. S. 91, reversing 184 Mass. 361.

[12]Everman *v.* Robb (1876) 52 Miss. 653; Dodge *v.* Smith (1896) 5 Kan. App. 742; see Williams *v.* Winsor (1878) 12 R. I. 9.

[13]Smithurst *v.* Edmunds (1862) 14 N. J. Eq. 408; Francisco *v.* Ryan (1896) 54 Oh. St. 307; Parker *v.* Jacobs (1880) 14 S. C. 112.

[14]Pinkstaff *v.* Cochran (1894) 58 Ill. App. 72; American Surety Co. *v.* Worcester Cycle Co. (1900) 100 Fed. 40.

[15]13 COLUMBIA LAW REVIEW 158.

[16]Cal. C. C. § 2883; N. Dak. C. C. § 6130; Okla. Laws 1903, § 3445; Wyo. Comp. Stat. (1910) § 3721; Idaho C. C. § 3379.

[1]For the treatment of such cases in equity see Chappell *v.* Stewart (1896) 82 Md. 323. But see note to that case in 37 L. R. A. 783.

[2]Porter *v.* Mack (1901) 50 W. Va. 581; Bishop, Non-Contract Law, 362; Burdick, Torts, (2nd ed.) 288.

conspiring added nothing to the injurious character of the wrongs complained of, no cause of action was set out unless those wrongs were themselves independently actionable. Secondly, although it can hardly be doubted that one who knows he is being "shadowed" by detectives is partially restrained in the exercise of his free right of locomotion,[3] yet no proof of any particular restraint was offered, and consequently no false imprisonment could be found.[4] In the third place, the right of privacy, if it exists, has been developed chiefly with regard to the unauthorized use of photographs for gain, and even in this limited application has been denied in some jurisdictions.[5] Although the trend of current opinion favors the recognition of a "right to immunity from wrongful publicity",[6] and this doctrine might well have been extended to cover the facts of the principal case, nevertheless the court was undoubtedly justified under the present condition of the authorities in preferring not to base its judgment on this ground.[7] And lastly, the false publication, which is essential to the action of defamation,[8] has always been limited to a publication of words or pictures,[9] and mere acts cannot come within the accepted definition of that tort. The facts seem to present, therefore, a situation which is not only unprecedented, but for which no established remedy seems available.

The foundation of every legal right is in a corresponding legal restraint.[10] Hence, when an unprecedented case arises, the court must at the outset determine from a consideration of the accepted remedies in similar cases, whether the legal right relied upon actually exists. If the principle is recognized and the only question is its application to the new facts, the court is competent to give a remedy without invasion of the field of legislation;[11] and the mere objection of novelty has long been discarded.[12] And the courts in deciding cases of novel

[3]Fotheringham *v.* Adams Exp. Co. (1888) 36 Fed. 252; Chappell *v.* Stewart *supra;* People *v.* Weiler (1904) 179 N. Y. 46.

[4]Woods *v.* State (1877) 3 Tex. App. 204; Johnson *v.* Tompkins (1833) 1 Baldw. 571; Greathouse *v.* Summerfield (1888) 25 Ill. App. 296; Hawk *v.* Ridgway (1864) 33 Ill. 473.

[5]Henry *v.* Cherry (1909) 30 R. I. 13; Hillman *v.* Star Pub. Co. (1911) 64 Wash. 691; Roberson *v.* Rochester Folding Box Co. (1902) 171 N. Y. 538. But a statute was subsequently passed in New York (ch. 132, Laws of N. Y. of 1903) making the unauthorized publication of a photograph for advertising purposes a misdemeanor for which the offender is also liable in a civil action, and this was held constitutional in Rhodes *v.* Sperry Hutchinson Co (1908) 193 N. Y. 223.

[6]See 11 COLUMBIA LAW REVIEW 566; 12 *id.* 693.

[7]Corliss *v.* Walker (1893) 57 Fed. 434, (1894) 64 Fed. 280; Pavesich *v.* Ins. Co. (1905) 122 Ga. 190; Foster-Milburn Co. *v.* Chinn (1909) 134 Ky. 424; Mundon *v.* Harris (1911) 153 Mo. App. 652. It is interesting to note the complete acceptance of this doctrine by the civil law. Itzkovitch *v.* Whitaker (1905) 115 La. 479.

[8]Pullman *v.* Hill (1891) 1 Q. B. 524, 527.

[9]Odgers, Libel & Slander, (4th ed.) 13; Burdick, Torts, (2nd ed.) 292; James Co. *v.* Bank (1900) 105 Tenn. 1; Mason *v.* Jennings (1680) Sir T. Raym. 401.

[10]Lord Holt in Ashley *v.* White (1704) 2 Ld. Raym. 938, 957; Cooley, Torts, (3rd ed.) 7, 15.

[11]Pasley *v.* Freeman (1789) 3 T. R. 51, 63; Pavesich *v.* Ins. Co. *supra.*

[12]Chapman *v.* Pickersgill (1762) 2 Wilson 145.

impression generally accept the pervading principle that when damage is produced by an injury to a valuable right no mere technicality will be permitted to work a denial of justice.[13] It is on the question of the existence of the legal right, however, that the greatest difficulty is experienced.

In the case under consideration the chief tendency of the defendant's acts was to humiliate and disgrace the plaintiff. The natural recourse, therefore, was to sue for injury to reputation. But reputation is not an absolute right,[14] for it may be blackened with impunity by spoken words not actionable *per se* nor followed by special damage,[15] and it has been urged that even in those cases where redress is afforded, the gist of the action is not the injury to the reputation but the damage thereby produced.[16] By the prevailing view, however, there is a recognized right of reputation,[17] the violation of which will be conclusively presumed from the mere publication in permanent form of defamatory matter,[18] while if the publication be temporary the law will require proof of special damage before it concludes that the right has been invaded.[19] With the single exception that the continued and notorious surveillance took the place of spoken words, the principal case contains every element of slander, and identical results ensued. Therefore, while the injury cannot be technically classed as defamation, it differs therefrom only in form and not in substance, and it seems that the plaintiff's remedy was properly found in an action on the case in the nature of defamation.[20]

CONDITIONS PRECEDENT AND THE STATUTE OF LIMITATIONS.—Suit brought in a court without jurisdiction should be ineffective to toll the Statute of Limitations, since in effect there has been no action at all.[1] The plight of a litigant who has brought such a suit, however, has induced some courts to extend liberally the benefit of the statutes prevailing in most jurisdictions[2] allowing an extra period within which to bring

[13]Foot *v.* Card (1889) 58 Conn. 1, 9; Kujek *v.* Goldman (1896) 150 N. Y. 176 and (1894) 9 Misc. 34.

[14]See authorities cited under note 9 *supra.*

[15]As in Chamberlain *v.* Boyd (1883) L. R. 11 Q. B. D. 407; Hopwood *v.* Thorn (1849) 8 C. B. 293.

[16]Townshend, Slander & Libel, (4th ed.) 57.

[17]See Cooley, Torts, (3rd ed.) 35; Times Pub. Co. *v.* Carlisle (1899) 94 Fed. 762.

[18]Odgers, Libel & Slander, (4th ed.) 7, 21.

[19]4 COLUMBIA LAW REVIEW 44; Frazer, Libel & Slander, (4th ed.) 3.

[20]See authorities cited under note 13 *supra.*

[1]Fernekes & Bros. *v.* Case (1888) 75 Ia. 152; Sweet *v.* Electric Light Co. (1896) 97 Tenn. 252; *cf.* United States *v.* Amer. Lumber Co. (1898) 85 Fed. 827. The Louisiana Civil Code, §§ 3518, 3551, provides, however, that the Statute is tolled "whether the suit has been brought before a court of competent jurisdiction or not." Blume *v.* New Orleans (1901) 104 La. 345.

[2]These statutes are all based on 21 Jac. 1 c. 16, 7 Stat. at Large 273-4. See § 405, New York Code of Civil Procedure: "If an action is commenced within the time limited therefor, and a judgment therein is reversed on appeal, without awarding a new trial, or the action is terminated in any other manner than by a voluntary discontinuance, a dismissal of